1293

SUPREME COURT OF THE UNITED STATES.

No. ~~10~~ 03.

KOSCIUSKO ARMSTRONG, APPELLANT,

VERSUS

BENJAMIN L. LEAR, ADMINISTRATOR OF THADDEUS KOSCIUSKO, ET AL.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE COUNTY OF WASHINGTON, D. C.

INDEX.

	Original.	Print.
Writ of error	1a	2
Citation and service	2a	2
Title—Bill of complaint	1	3
Complainant's Exhibit, A	5	4
Do do B	6	5
Order of publication against absent defendants	11	7
Answer of B. L. Lear	14	8
Do do referred to in the preceding answer	15	9
Defendant's exhibit, A	20	11
Do do B	23	12
Do do C	24	13
Do do D	28	14
Do do F	32	17
Do do E	33	17
Replication of K. Armstrong	33	18
Cause set for hearing	34	18
Decree	34	18
Clerk's certificate	35	18

UNITED STATES OF AMERICA, *ss*

The President of the United States to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington—*greeting.*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Kosciuszko Armstrong, complainant, and Benjamin L. Lear, administrator of Thaddeus Kosciuszko, Major Estko, and Monsieur Zeltner,

defendants a manifest error hath happened, to the great damage of the said Kosciuszko Armstrong, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington on the
next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and the custom of the United States should be done.

Witness, the honorable John Marshall, Chief Justice of the said
[L. S.] Supreme Court. Issued this 14th day of January, 1832.

WM. BRENT, *Clerk Circuit Court,*
Dist. Cola. Cty. of Washington.

UNITED STATES OF AMERICA,
District of Columbia, Washington County, } *ss.*

To Benjamin L. Lear, administrator of Thaddeus Kosciuszko, Major Estko, and Monsieur Zeltner—*greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the
Monday of next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein Kosciuszko Armstrong is plaintiff, and you are defendant, to show cause, if any there be, why judgment rendered against the said Kosciusko Armstrong, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable William Cranch, chief judge of the circuit court for the District of Columbia, this 14th day of January, 1832.

Service acknowledged by

B. L. LEAR, Esq.
Sol'r for Defendants.

14*th January*, 1832.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of December, being the fifth day of the same month, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States of America the fifty-sixth:

Present—The Hon. WILLIAM CRANCH, Chief Judge.
BUCKNER THRUSTON, & JAMES S. MORSELL, } Assistant Judges.
HENRY ASHTON, esquire, Marshal.
WILLIAM BRENT, Clerk.

In the record of proceedings of the same court, among others, are the following, to wit:

KOSCIUSKO ARMSTRONG,
vs.
BENJAMIN L. LEAR, administrator of THADDEUS KOSCIUSKO, MAJOR ESTKO, and MONSIEUR ZELTNER.

Be it remembered, that heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and twenty-nine, the said Kosciusko Armstrong, by Richard Wallack, esquire, his solicitor, filed in court here the following bill of complaint and exhibits, to wit:

Bill of Complaint.

To the honorable the judges of the circuit court of the District of Columbia for the county of Washington, sitting in chancery, humbly complaining, showeth unto your honors, your orator Kosciuszko Armstrong, of Red Hook, in the county of Dutchess, and State of New York, that Thade Kosciuszko, late an officer in the service of the United States, in the war of their revolution, and of the republic of Poland, on or about the fifth day of May, in the year seventeen hundred and ninety-eight, placed a large fund in the hands of Thomas Jefferson, esquire, late President of the United States, far exceeding the sum of $10,000, and executed a will and testament, a copy of which is herewith filed, and marked exhibit A, and which this complainant prays may be taken as a part of this his bill. That afterwards, to wit, on or about the twenty-eighth day of June, in the year one thousand eight hundred and six, the said Thade Kosciuszko, being then domiciled at Paris, in the Kingdom of France, executed a certain instrument of writing, being in the nature and of the effect of a last will or writing testamentary, whereby he willed and directed that, at his decease, the sum of three thousand seven hundred and four dollars, current money, should be possesed by, and delivered over to the full enjoyment and use of your orator, Kosciuszko Armstrong; and the said testator thereby instructed and authorized his only lawful executor in the United States, the said Thomas Jefferson, to reserve, in trust for that special purpose, of the funds he held belonging to the testator, the aforesaid sum of three thousand seven hundred and four dollars, in principal to your orator, to be paid by him, the said Thomas Jefferson, immediately after his decease, to your orator; and, in case of his death, to the use and benefit of his surviving brothers. That the said testator, on the day and year aforesaid, duly signed and sealed the said instrument of writing in the presence of two competent witnesses, who attested the same, and acknowledged the same, on the same day, before Fulwar Skipwith, commercial agent and agent for prize causes for the said United States, at Paris; and then delivered the same, under his hand and seal, to John Armstrong, father of your orator. That afterwards, to wit, on the fifteenth day of October, in the year eighteen hundred and seventeen, the said Thade Kosciuszko departed this life, leaving the said instrument of writing unrevoked; and the same was, after the death of the said Thade Kosciuszko, admitted to probate, and duly proved in the orphans' court of Washington county; a copy whereof, herewith exhibited, marked exhibit B, your orator prays may be taken as a part of this his bill.

That your orator is advised, and believes, that the said instrument of writing is, to all intents and purposes, a last will and testament, and must operate as such, and revokes *pro tanto* the bequests and appropriation made

in the will first mentioned; that the said Thomas Jefferson, named as executor in the will first mentioned, refused to take out letters testamentary on the estate of the said Thade Kosciuszko, and renounced all claim and right so to do, according to law; and Benjamin L Lear, whom your orator prays may be made defendant to this his bill, was duly appointed administrator, with the will annexed, on the said estate; which has since come into the hands of the said Benjamin L. Lear, far exceeding as aforesaid, 10,000 *dollars*. That the said Benjamin L. Lear has been frequently applied to by your orator for the payment of the aforementioned legacy of 3704 dollars, together with the interest thereon, which the said Lear refuses to pay, until the order and decree of this court had upon the premises; and the said defendant combining and confederating with one Major Estko, a subject of his Imperial Majesty, the Emperor of all the Russias, and Monsieur Zeltner, formerly minister plenipotentiary of the Helvetic republic at Paris, and now residing at Soleure, in Switzerland, whom your orator prays may be made parties to this his bill of complaint; the said confederates sometimes pretend that the said Thade Kosciuszko never executed the said the last mentioned writing testamentary, and sometimes they pretend that the said Major Estko is the heir at law of the said Thade Kosciusko, and, as such, entitled to all his said estate; and sometimes they pretend that the said Thade Kosciuszko, during his life time, made some disposition of his said estate in favor of the children and other relatives of the said Zeltner; whereas your orator doth charge the truth to be, that the said last mentioned writing testamentary was duly executed as aforesaid, and that the said Major Estko is not the heir at law of the said Thade Kosciusko, or if he is, that he is not entitled to receive distribution of the said personal estate, and that the said Thade Kosciuszko made no testamentary or other disposition in favor of the said Zeltner, or his children or relatives, which could affect the claim of your orator under the said writing testamentary. All which actings and doings, and pretences of the said confederates, are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orator. In tender consideration whereof, and for as much as this complainant has no adequate remedy at common law, but only in a court of equity, where matters of this and the like nature are cognizable, and to the end that the said defendants may be compelled to appear and answer all the matters in this bill contained, as fully and particularly as if the said defendants were specially interrogated on their corporal oaths, and that he the said defendant, B. L. Lear, may state what funds he has in his hands belonging to the estate of the said Thade Kosciuszko; and whether the instruments of writing, before referred to, are authentic.

To the end, also, that they may be compelled to pay the amount of the legacy bequeathed as aforesaid to this complainant, with interest thereon, and that such further other and decree may be made on the premises as to your honors may seem meet, and his case requires—

May it please your honors to grant unto this complainant the United States' most gracious writ of subpœna, commanding the said defendants to appear, &c., and answer, &c., and as in duty bound he will ever pray.

RICHARD WALLACK,
Sol'r for Complainant.

Complainant's Exhibit A.

I, Thaddeus Kosciuszko, being just on my departure from America, do hereby declare and direct that, should I make no other testamentary dis-

position of my property in the United States, I hereby authorize my friend Thomas Jefferson to employ the whole thereof in purchasing negroes from among his own or any others, and giving them liberty in my name; in giving them an education in trades, or otherwise, and in having them instructed for their new condition in the duties of morality, which may make them good neighbors, good fathers or *moders,* husbands or wives, and in their duties as citizens, teaching them to be defenders of their liberty and country, and of the good order of society, and in whatsoever may make them happy and useful. And I make the said Thomas Jefferson my executor of this.

T. KOSCIUSZKO.

5th day of May, 1798.

Complainant's Exhibit B.

Know all men by these presents, that I, Thade Kosciuszko, formerly an officer of the United States of America in their revolutionary war against Great Britain, and a native of Lilourui, in Poland, at present residing at Paris, do hereby will and direct that, at my decease, the sum of three thousand seven hundred and four dollars, currency of the aforesaid United States, shall of right be possessed by, and delivered over to the full enjoyment and use of Kosciuszko Armstrong, the son of General John Armstrong, minter plenipotentiary of the said States at Paris. For the security and performance whereof, I do hereby instruct and authorize my only lawful executor in the said United States, Thomas Jefferson, President thereof, to reserve in trust for that special purpose, of the funds he already holds belonging to me, the aforesaid sum of three thousand seven hundred and four dollars, in principal; to be paid by him, the said Thomas Jefferson, immediately after my decease to him, the aforesaid Kosciuszko Armstrong; and, in case of his death, to the use and benefit of his surviving brothers.

Given under my hand and seal, at Paris, this twenty-eighth day of June, one thousand eight hundred and six.

THADE KOSCIUSKO. [SEAL.]

In presence of

CHARLES CARTER,
JAMES M. MORRIS.

COMMERCIAL AGENCY OF THE UNITED STATES, PARIS.

On this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and six, and of the independence of the United States of America the thirtieth, before the undersigned, commercial agent and agent of prize causes for the United States of America. at Paris, personally appeared Thade Kosciusko, late officer of the said United States, who, in his presence, signed and sealed the foregoing transfer in favor of Kosciusko Armstrong, the son of Gen. John Armstrong, minister plenipotentiary of the United States at Paris, and, in case of his death, to the use and benefit of his surviving brothers; and did acknowledge it as his his own act and deed for the purposes therein specified.

In testimony whereof, he, the said undersigned as aforesaid, has hereunto signed his name, and affixed his seal of office, at Paris, the day and year above written.

[L. S.] FULWAR SKIPWITH.

ORPHANS' COURT, WASHINGTON COUNTY, *District of Columbia, to wit*:

Be it remembered, that, on this 26th day of September, in the year 1827, Richard Forrest, of the county and District aforesaid, made oath on the Holy Evangels of Almighty God, that he is well acquainted with the handwriting of Fulwar Skipwith, late United States' commercial agent at Paris, having often seen him write; and that he verily believes the signature, "Fulwar Skipwith," to the certificate to the annexed instrument of writing, purporting to be the will of Thade Kosciusko, is the proper handwriting of said F. Skipwith; and that he believes the seal attached to said certificate is the official seal of the United States' consulate at Paris.

Sworn in open court.

Teste, HENRY C. NEALE, *Reg'r Wills.*

And now, on this 8th day of May, in the year 1828, in the orphan's court of Washington county, and District aforesaid, Joseph C. Cabell, of Nelson county, in the State of Virginia, makes oath on the Holy Evangels of Almighty God, that he is well acquainted with the handwriting of Charles Carter, one of the subscribing witnesses to the annexed paper, purporting to be the will and testament of Thade Kosciusko, deceased, having often seen him write; and that he verily believes the signature, "Charles Carter," as witness to said will, to be the proper handwriting of said Charles Carter, now deceased; and that he is well acquainted with the handwriting of Fulwar Skipwith, late commercial agent of the United States at Paris, having often seen him write; and that he verily believes the signature, "F. Skipwith," to the annexed certificate to the instrument of writing, purporting to be the will of Thade Kosciusko, is the proper handwriting of the aforesaid Fulwar Skipwith, who now resides near Baton Rouge, Mississippi.

Sworn in open court.

Teste, HENRY C. NEALE, *Reg'r Wills.*

DISTRICT OF COLUMBIA, *Washington County, to wit:*

The 19th day of November, 1828, James M. Morris, one of the subscribing witnesses to the aforegoing instrument of writing, purporting to be the last will and testament of Thadeus Kosciusko, deceased, made oath on the Holy Evangels of Almighty God, that he did see the testator, therein named, sign and seal this will; that he published, pronounced, and declared the same to be his last will and testament; that, at the time of his so doing, he was, to the best of his apprehension, of sound and disposing mind, memory, and understanding; and that he, together with Charles Carter, the other subscribing witness, respectively subscribed their names as witnesses to this will, in the presence, and at the request of the testator, and in the presence of each other.

Sworn in open court.

Teste, HENRY C. NEALE, *Reg'r Wills.*

DISTRICT OF COLUMBIA, *Washington County, to wit:*

I certify that the aforegoing last will and testament of Thadeus Kosciusko is truly copied from the original, filed and recorded in my office.

Witness my hand, and seal of office, this 5th day of March, in the year 1829.

[SEAL.] HENRY C. NEALE, *Reg'r Wills.*

And thereupon subpœnas issued, as prayed for in said bill of complaint, and made returnable on the first Monday of April.

At which said first Monday of April, in the year of our Lord one thousand eight hundred and twenty nine, come into the circuit court here the said complainant, by his solicitor aforesaid; and the marshal of the District aforesaid, to whom the said subpœnas were directed, makes return to the court here, thereon endorsed, to wit: "Summoned B. L. Lear, non sunt the rest. T. Ringgold, marshal." And the said Benjamin L. Lear, being called, appears in court, by his solicitor.

And thereupon the said cause was regularly continued, at rules, before the clerk of the said court, until the first Monday of August.

At which said first Monday of August, in the year of our Lord one thousand eight hundred and twenty-nine, come again into court here the said Kosciusko Armstrong, by his solicitor aforesaid, and the said Benjamin L. Lear, by his solicitor aforesaid; and it appearing to the satisfaction of the said court that two of the said defendants, to wit, Major Estko and Monsieur Zeltner, are not within the jurisdiction of this court, the said court, on motion of the said Kosciusko Armstrong, by his solicitor aforesaid, make the following order of publication, to wit:

Order of publication against absent Defendants.

CIRCUIT COURT OF THE DISTRICT OF COLUMBIA FOR WASHINGTON.—*In Chancery.*

KOSCIIUSKO ARMSTRONG,
vs.
BENJAMIN L. LEAR, administrator,

With the will annexed, of Thade Kosciuszko, Major Estko, a subject of his Imperial Majesty the Emperor of all the Russias, and Monsieur Zeltner, formerly minister plenipotentiary of the Helvetic republic at Paris, and now residing at Soleur, in Switzerland.

The bill in this case states, that the said Thade Kosciuszko, about the 5th of May, 1798, placed a large fund in the hands of Thomas Jefferson, late President of the United States, exceeding the sum of $10,000; and executed a will; that, on or about the 28th of June, 1806, the said Kosciuszko executed, at Paris, an instrument of the nature of, and effect of, a last will or writing testamentary, whereby he willed and directed that, at his decease, the sum of $3,704 should be possessed by, and delivered over to, the full enjoyment and use of the complainant, to be paid by the said Thomas Jefferson to the complainant, immediately after the said Kosciuszko's decease, out of the said funds; that the said Kosciuszko, on the said 28th of June, 1806, duly signed and sealed the said instrument of writing, in the presence of two competent witnesses, who attested the same, and acknowledged the same, on the same day, before Fulwar Skipwith, commercial agent, and agent for prize causes, for said United States at Paris, and then and there delivered the same under his hand and seal to John Armstrong, father of the complainant. That afterwards, to wit, on the 15th day of October, 1817, the said Kosciuszko departed this life, leaving the said instrument of writing unrevoked, and the same has since been duly admitted to probate, and proved in the orphans' court of Washington county. That the said Thomas Jefferson, named as executor in the will first mentioned, refused to take out letters testamentary on the estate of the said Kosciuszko; and thereupon

the defendant Lear was duly appointed administrator with the will annexed. The bill further charges that the said Lear refuses to pay the said sum of $3,704, because, among other reasons, a claim to the whole of the funds of said estate has been made by said Major Estko, as heir at law of said Kosciuszko, and another claim by the said Monsieur Zeltner under another will, which he alleges the said Kosciuszko to have made in Europe, in favor of himself or some of his relations; and the complainant states the object of his said bill to be, to enforce a discovery, by said Lear, of the funds and effects which have come to his hands as administrator as above named, and the payment by him to the complainant of said sum of $3,704, with interest, &c. And it appearing to the court that two of the defendants in this case, viz., the said Major Estko and Monsieur Zeltner, are not within the jurisdiction of this court, and do not reside within the United States, but, as far as appears to the court, one of the said defendants resides in Poland, and the other in Switzerland: it is therefore, by this court here, on motion of complainants' solicitor, ordered, this third day of August, 1829, that the said absent defendants be and appear before this court here, in person or by solicitor, on or before the second Monday of December next, and answer the complainant's said bill, or show cause why a decree should not be passed as prayed by said bill: otherwise, the same will be taken for confessed against them, provided a copy of this order be published in the National Intelligencer twice a week, for six weeks successively, the first publication thereof to be at least four months previous to said second Monday of December next.

By order of the court:

Test, WILLIAM BRENT, *Clerk.*

3d August, 1829.

And thereupon the said cause was regularly continued until the first Monday of December, in the year eighteen hundred and thirty-one.

And now, to wit, the said first Monday of December, in the year of our Lord one thousand eight hundred and thirty-one, come again into the circuit court here, as well the said Kosciuszko Armstrong, by his solicitor aforesaid, and the said Benjamin L. Lear, by his solicitor aforesaid; and the said Benjamin L. Lear filed in court here the following answer, to wit:

Answer of B. L. Lear.

To the honorable the Judges of the circuit court of the District of Columbia, sitting in chancery, for the county of Washington:

The answer of Benjamin L. Lear, administrator of Thaddeus Kosciuszko, to the bill of complaint of Kosciuszko Armstrong, of Red Hook, in Dutchess county, in the State of New York.

This respondent, saving and reserving, &c., for answer to the said bill, saith, that true it is that he is the administrator of Thaddeus Kosciuszko, with the will annexed, and that he has assets for such administration amounting to more than 10,000 dollars. That, on or about the 8th of January, 1823, the said complainant, by John Armstrong, his next friend, (the said complainant being then an infant,) filed in your honorable court his bill of complaint against this respondent, for the same purpose as this, and in substance the same as his bill in this case. That this respondent, on or about the 21st day of January, 1823, filed his answer to the said bill, with six exhibits, to all which he begs leave to refer your honors, and

prays that they may be taken as part of this his present answer. Since that former answer was filed, the funds, in this respondent's hands, have continued invested, and, as they, or the dividends on them, have, from time to time, come to his hands, they have been re-invested until the estate has largely accumulated. That he has not yet carried into effect the will under which he administers, for that certain persons, residing, as he understands, in Europe, have filed a bill in your honorable court against him as administrator, claiming a large portion of the assets, if not the whole, as creditors or mortgagees of the said Kosciuszko; and certain other persons also residing, as he understands, in Europe, have filed another bill against him, claiming the whole assets as heirs at law of the said Kosciuszko, and therefore, the distributees of the said assets. That this respondent is ready to obey any decree of this honorable court in the premises, but has refused to pay any of the assets to any of the claimants, unless decreed so to do, and be thus protected from other claims.

And this respondent prays that he may be hence dismissed, with his costs.

B. L. LEAR,
Adm'r of Thaddeus Kosciuszko.

Answer of B. L. Lear to the bill of K. Armstrong referred to in the preceding answer.

The answer of Benjamin L. Lear to the bill of complaint of Kosciuszko Armstrong, an infant, under the age of twenty-one years, by his father and next friend, John Armstrong, of the county of Dutchess, in the State of New York.

This respondent, saving and reserving to himself, now, and at all times hereafter, all and all manner of benefit and advantage of exception to the manifold uncertainties and imperfections in the said complainant's said bill contained, for answer thereunto, or unto so much thereof as materially concerns this defendant to make answer unto, saith, that he is the administrator, with the will annexed, of Thaddeus Kosciuszko; that he has no knowledge of a fund having been placed, by the late General Thadé Kosciuszko, in the hands of Thomas Jefferson; and a will having been executed by him, excepting such as he has derived from a letter of said Thomas Jefferson to Mr. Pierre de Politica, the envoy from Russia to the United States of America, and a copy of the record of the court of Albemarle county, in Virginia; a copy of which letter and record he received among the other papers from said Thomas Jefferson, which were put into his hands as relating to the administration of the estate of the said Thaddeus Kosciuszko; and a copy of which letter is herewith exhibited to the court, marked defendant's exhibit A, which this defendant prays may be taken as part of this his answer. That this respondent admits that the instrument mentioned in the complainant's bill, and exhibited to this court by him, marked exhibit B, was executed and authenticated, as it purports to be, at Paris, in the kingdom of France, the said Thadé Kosciuszko being domiciled and resident at said Paris at the time said instrument was executed and bears date; but this defendant submits to this honorable court, and prays its decision thereon, whether it will decree him to pay the said sum of three thousand seven hundred and four dollars to the said complainant, upon an instrument made under the circumstances, and authenticated in the manner that the aforesaid instrument is; and whether said instrument shall have the effect to revoke or alter any part of said Kosciuszko's will solemnly ex-

ecuted, and left in the hands of his executor in this country, to be carried into execution at his death, and especially when it appears, from this defendant's exhibit A, that the said executor had received, from his testator, a letter of so late date as the 15th of September, 1817, in which he says of this fund, "*after my death you know its invariable destination.*" And this defendant submits to the decision of this honorable court, whether, if the instrument aforesaid, being genuine and properly authenticated, is of the nature and effect of a will or testament, the said letter of the testator to his executor does not operate as a revocation of said instrument, and a re-establishment and republication of his former will? And this defendant, further answering, saith, that he believes it to be true that the said Thomas Jefferson, named as executor in said Koscuiszko's will, refused to take out letters testamentary on his estate, and renounced all claim and right so to do, according to law. And this defendant saith, that he was, on the fourteenth day of August, in the year 1821, appointed by the Orphans' Court, of the county of Washington, District of Columbia, the administrator, with the will annexed, of the estate of the said General Thaddeus Kosciuszko, and received from the said Orphans' Court, letters of administration with said will annexed, a copy of which is herewith exhibited to this court, marked defendant's exhibit C., and which this defendant prays may be taken as part of this his answer. That, after receiving said letters of administration, there came to the hands of this defendant from the said Thomas Jefferson, as the estate of said Kosciuszko, two certificates of the six per cent. stock of the United States — one of eleven thousand three hundred and sixty-three dollars and sixty-three cents, and the other of one thousand one hundred and thirty-six dollars and thirty-six cents, and one certificate of stock of the Bank of Columbia, of forty-six shares, amounting, at their par value, to four thousand six hundred dollars. That the appraisers appointed by the aforesaid Orphans' Court to estimate the value of said stocks, appraised them both at par, taking into consideration the advance of the market price of the one, and the depreciation of that of the other, and their respective amounts, and appraising them both together. That, after the receipts of said certificates, there came to the hands of this defendant dividends upon staid stocks to the amount of four thousand one hundred and four dollars, which he invested, with the consent of said Orphans' Court, in six per cent stocks of the said United States, and which purchased of said stock of the United States a certificate of three thousand seven hundred and ninety four dollars and twenty-four cents, and that there have since come to his hands, as dividends upon all of said stocks, five hundred and eighty dollars and eighty two cents, making the whole amount of the estate of said Kosciusko, which has came to his hands, *twenty thousand eight hundred and ninety-four dollars and twenty-three cents* of stocks estimated at their par value, and *five hundred and eighty dollars and eighty-two cents* in cash. This defendant, further answering to the bill of said complainant, saith, that among the papers which came to his hands as herein beforementioned, is a letter from the aforesaid Mr. De Poletica, to the said Thomas Jefferson, enclosing a copy of a despatch from the Viceroy of Poland to him, a copy of which letter and despatch is herewith exhibited to this honorable court, marked defendant's exhibit D.; and by which this defendant understands that the whole estate of said Kosciuszko may hereafter be claimed by a Major Estko, of Poland, as the heir at law of said Koscuizko. That this respondent communicated to said Poletica in April last, such information as he possessed in relation to said estate, and

was informed by said Poletica that the same would be transmitted to the said Vice-roy of Poland. That there were also, among the papers aforesaid, two letters from a Mr. Zeltner to said Thomas Jefferson, copies of which are herewith exhibited, marked "defendant's exhibit E, and defendant's exhibit F," by which this defendant understands that the said Kosciuszko, has disposed of the greater part of his fortune in favor of the children, neices, brothers, and sister of the said Zeltner, and that his (said Kosciuszko's) parents were living in Polandat the date of the first of said letters; and this defendant denies all and all manner of confederacy, &c. without that, &c. All which matters and things this defendant is ready to aver and prove as this honorable court shall direct and award, and humbly prays to be hence dismissed with his reasonable cost and charges in this behalf most wrongfully incurred.

B. L. LEAR, *Adm'r*
of the estate of Thaddeus Kosciuszko.

Exhibit A.

MONTICELLO, *June* 12, 18 .

SIR: I have received your favor of May 27, on the subject of the property of the late General Kosciuszko, vested in our funds, and left under my care and direction. A little before the departure of the General from America in 1798, he wrote a will, all with his own hand, in which he directed that the property he should possess here at the time of his death, should be laid out in the purchase of young negroes, who were to be educated and emancipated: of this will he named me executor, and deposited it in my hands. The interest of his money was to be regularly remitted to him in Europe. My situation in the interior of the country rendered it impossible for me to act personally in the remittances of his funds, and Mr. John Barnes, therefore, of Georgetown, was engaged under a power of attorney to do that on commission; which duty he regularly and faithfully performed until we heard of the death of the General. We had, in the mean time, by seasonably withdrawing the greater part of his funds from the bank, in which he had deposited them, and lending them to the Government during the late war, augmented them to $17,159 63: to wit, $12,499 63 in the funds of the United States, and 4600 dollars in the Bank of Columbia, in Georgetown. I delayed, for a considerable time, the regular probat of the will, expecting to hear from Europe whether he had left any will there which might affect his property here. I thought that prudence and safety required this, although the last letter he wrote me before his death, dated Sept. 15, 1817, assured me of the contrary in these words, " nous avancous tous en age, c'est pour cela, mon cher et respectable ami, que je vous prie de vouloir bieux (et comme vous avez tout le pouvoir) arranges qu' aprés la mort de notre digne ami Mr. Barnes, quelq'un d'aufri probe que lui prenne sa place, pour que je recoive les interets ponctuellement de mon ford; duquel, apris ma mort, *vous savez la destination invariable*, quant a' present faites pour le mieux comme vous pensez." After his death, a claim was presented to me on behalf of Kosciuszko Armstrong, son of General Armstrong, of 3704 dollars, given in Kociuszko's lifetime, payable out of this fund, and subsequently come a claim to the whole from Mr. Zoeltner of Soleure, under a will made there. I proceeded, on the advice of the Attorney General of the U. S. to prove the will in the State Court of the district in which

I reside, but declined the executorship. When the General named me his executor, I was young enough to undertake the duty, although from its nature it was like to *to* be of long continuance, but the lapse of 20 years more had rendered it imprudent for me to engage in what I could not live to carry into effect: finding now, by your letter of May 27, that a relation of the General's alsoclaims this property. that it is likely to become litigious, and age and incompetence to business admonishing me to withdraw myself from entanglements of that kind, I have determined to deliver the will and whole subject over to such court of the U. S as the Attorney General of the U. S. shall advise, (probably it will be that of the District of Columbia) to place the case in his hands, and to petition that court to relieve me from it, and to appoint an administrator with the will annexed. Such an administrator will probably call on the different claimants to interplead, and let the court decide what shall be done with the property. This I shall do, sir, with as little delay as the necessary consultations will admit, and when the administrator is appointed, I shall deliver to him the original certificates which are in my possession: the accumulating interest and dividends remain untouched in the Treasury of the U. S. and Bank of Columbia.

I learnt, with pleasure, your return to the U. S ,and in a character which enables you to do much good to your own, as well as to our country The peace and friendly intercourse of nations depend much on the personal characters of their diplomatic agents, whose view of things, in black or in white, cannot fail to tinge that of their respective governments. Your friendly dispositions give us entire confidence that every thing from you will be conciliatory, and its effects the greater, as the proofs we have had of the friendship of your great and good emperor give us confidence that whatever seed you sow will fall 'neither by the way-side, nor in stony places, nor among thorns, but on good ground, which will bring forth fruit to an hundred fold.'

We all recollect with pleasure the favor of your former visit to Monticello, and a repetition will be equally gratifying, should your affairs permit. The country cannot, like the cities, furnish the amusements of varied society: a varied scene is all it can offer to its guests, and a view of the tranquil current of domestic life. In presenting to you the souvenirs of the family, I tender my salutations also, and the assurance of my high respect and consideration.

TH. JEFFERSON.

H. E. M. De Poletika,
Ambassador of Russia.

Exhibit B.

Red Hook, 4*th Jan.*, 1818.

Dear Sir: Some years before I left Paris, Gen. Kosciuszko put into my hands the paper, of which the enclosed is a copy. Understanding that it was not to be used till the General's death, it has been in my cabinet unopened from that day till this, and is now recurred to on the information brought by the mails of the day, that the General had died in Switzerland on the 15th of October last, and that his funeral was celebrated in Paris on the 31st of that month. I beg to know from your kindness, whether you have any information from Switzerland or France in relation to this event, and (if it corresponds with mine) what other steps, if any besides furnishing the original document, will be necessary or proper to give effect to the Ge-

neral's will so far as my son is concerned? The young man is now fifteen or sixteen years old.

I beg you, sir, to accept assurances of my great respect and esteem,

(Signed) JOHN ARMSTRONG.

THOMAS JEFFERSON, Esq.
Monticello, Virginia.

Exhibit C.

DISTRICT OF COLUMBIA, *Washington County, sct.*

The United States of America. To all persons to whom these presents shall come, greeting:

Know ye, that an attested copy of the last will and testament of Thaddeus Kosciuszko, of Poland, deceased, hath, in due form of law, been exhibited and recorded in the office of the Register of Wills for Washington county, a copy of which to these presents annexed, and administration of all the goods, chattels, and credits, of the said Thaddeus Kosciuszko deceased, is hereby granted and committed unto Benjamin L Lear, Thomas Jefferson, the executor by the said will appointed, having refused to act as such.

Witness Richard B. Lee, esquire, Judge of the Orphans' Court of Washington county, in the District of Columbia, this 14th day of August, in the year of our Lord one thousand eight hundred and twenty one, and of the independence of the United States the 46th.

[SEAL.]

Teste: HENRY C. NEALE, *Reg. of Wills.*

I do swear, that I will well and truly administer the goods, chattels, and personal estate of Thaddeus Kosciuszko, late of Poland, deceased to the best of my knowledge, according to law, and will give a just account of my administration when thereto I shall be lawfully called.

So help me God.

Sworn in open court,

Teste: HENRY C. NEALE, *Reg. Wills.*

I, Thaddeus Kosciuszko, being just in my departure from America, do hereby declare and direct that, should I make *make* no other testamentary disposition of my property in the United States, I hereby authorize my friend Thomas Jefferson to employ the whole thereof in purchasing negroes from among his own or any others, and giving them liberty in my name, in giving them an education in trades or otherwise, and in having them instructed, for their new condition, in the duties of morality, which may make them good neighbors, good fathers or *moders*, husbands or wives, and in their duties as citizens, teaching them to be defenders of their liberty and country, and of the good order of society, and in whatsoever may make them happy and useful; and I make the said Thomas Jefferson my executor of this.

T. KOSCIUSZKO.

5th day of May, 1798.

At a superior court of law held for Albemarle county, the 12th day of May, 1819, this instrument of writing, purporting to be the last will and

testament of T. Kosciuszko, deceased, was produced into court, and satisfactory proof being produced of its being written entirely in the handwriting of the said Thaddeus Kosciuszko, the said is ordered to be recorded; and therefore, Thomas Jefferson, the executor therein named, personally appears in court, and refuses to take upon himself the burthen of the execution of the said will.

Teste: JOHN CARR, *Clerk.*

VIRGINIA, *Albemarle Superior Court Office, to wit:*

I, Alexander Garrett, clerk of the superior court of law for the said county of Albemarle, do hereby certify that the above is a true copy of the original will of Thaddeus Kosciuszko, deceased, of record in my office, as likewise the order of court thereupon attested, by John Carr, then clerk of said court.

In testimony whereof, I have hereunto set my hand, and caused the seal of my office to be hereunto affixed, this tenth day of January, one thousand eight hundred and twenty, and of the 44th year of the Commonwealth.

[SEAL.] ALEXANDER GARRET, *C. C.*

VIRGINIA, *Albemarle county, to wit:*

I, Archibald Stuart, duly allotted judge to the eighth circuit, composed of the counties of Bath, Rockbridge, Augusta, Amherst, Nelson, and Albemarle, do hereby certify that Alexander Garrett, whose signature is annexed to the within certificate, is clerk of the superior court of law for Albemarle county, duly appointed and qualified as such; and that his certificate is in due form of law.

Given under my hand and seal, this 23d day of January, 1820.

ARCH'D STUART. [SEAL.]

I certify that the aforegoing last will of Thaddeus Kosciuszko, together the order of court, is truly copied from an attested copy of record in my office.

Witness my hand and seal of office, this 14th day of August, in the year 1821.

[L. S.] HENRY C. NEALE, *Reg. Wills.*

Exhibit D.

WASHINGTON CITY, *le* 27 *Mai*, 1819.

MONSIEUR: Peu avant mon départ de Paris en février dernier j'ai reçu du vice Roi de Pologne Prince Lajanceck, la lettre dont j'ai l'honneur de vous transmettre ci joint la copie avec celles des prèces qui l'accompagnoient: Le tout indique clairement la nature des renseignements, que me demande le Gouvernement de Pologne et que je n'ai pas hésité de lui promettre, comptant d'avance sur votre obligeance malgre tous les motifs qui' m'engageoient á respecter vos loisirs si précieux par les souvenirs aux quels ils se ratta chent.

Je saisis avec empressement cette occasion pour vous exprimer Monsieur, mon vif desire d'obtenir la permission de me presenter encore une fois á

Monticello, pour vous y renouveller de vive voix l'expression de la haute consideratien avec la'quelle j'ai l'honneur.

D' etré, Monsieur,

Votre très humble et tres,

Obeissant serviteur,

PIERRE DE POLETICA,

Envoy de Russie pres les U. S. d'Amerique.

Copie d'une dépeche du Vice Roi du Royaume de Pologne á Mr. de Poletica, datee de Varvosie, du 17 *Nov.*, 1818.

Le sieur Estko ci' devant Major a' l'armée Polonaise, neveu du feu le Général Kosciuszko, se trouvant dans le cas d'avoir besoin d'une information éxact sur l' état dé la fortune que de dit Général á pu de laisser, a reclame l'intervention de son Gouvernment à l'effet de lui procurer des éclaircissements nécessaries à cet égard par l' entremise de la mission S. M. J. et R Notre Auguste Maitre pres la cour de France.

La correspondance dout Mr. le Gl. Pozzo di Borgo a bien voulu se charger à cet effet avec des personnes qui lui sembloient être le plus à même de connoître les moyens pécuniare du feu Kosciuszko, a donné pour resultat deux lettres ci-joints en copies portant quelques renseignements sur l' object ci dessus mentionné.

Is courte de ces deux piecès et votre excellence voudra bien s'en convaincre, que le Gl. Kosciuszko outre les fonds déposés entre les mains de différentes banquiers en France et en Suisse en possédoit de plus considerables encore chez Mrs. Thomson et Bonar à Londres et chez Jefferson et Barnes á Washington.

Le sieur Estko met d'autant plus d'interêt à obtenir des notions précises relativement aux fonds de son oncle places en Amérique, qué 'il a tout lieu de supposer qu'ils ne sont point compris parmi les sommes dout de defunt a dispose par son testament.

Faisant par conséquent droit aux plus vives instances du pètitionaire, j'ose vous supplier, Monsieur de daigner faire les démarches nécessares pour cet effect compris les sieurs Jefferson et Barnes, citoyens des Etats Unis, et de vouloir bien m' en communiquer le resultat des qu'il aura été porte á votre connoissance.

Je saisis avec empressement cette occasion pour offrer à V. Ex. l'expression de ma trés haute consideration.

(Signé) LAJONCECK.

Conforme à l' original:

POLETICA.

Copie d' une lettre de Mr. Hollinquer à S. Ex. le Gl. Pozzo di Borgo datée de Paris du 2 *Juillet*, 1818.

En reponse á la lettre que V. Ex. nous a fait l'honneur, de nous écrire d' le 29 Juin, nous la prevenons qu' aux époques du 5 Avril et du 4 Juin, 1818, les fonds déposes chez nous par le feu le Gl. Th. Kosciuszko, s'elevoient en principal á la somme de fr. 99.775, et que le fer. Octobre, 1817, le solde liu revenant sur nos lions, etoit de f. 102.400, a peu de chose prés et interéts compris.

D'apres quelques renseignements que nous avons recus et dout nous ne pouvons guaranter l'exactitude il paroit qu' au de ces du Gl. Kosciuszko, (15 Octobre, 1817,) il avoit en depot environ:

f. 100.000 chez Messrs. T. Thomson, T. Bonar et cie. a Londres,
6.000 chez Mr. G. Esher á Zurich,
5.000 chez Mr. Beltin á Soleuse,

111.000 ensemble.

Le General Kosciuszko á fait deux testaments l'un daté de Soleuse le 4 Juin, 1816.—L'áutre également daté de Soleuse, le 10 Octobre, 1817—Par le premier il á legue sur ses fonds en nos mains.

f. 60.000 en faveur de Mlle. Thadea Ernine Wilhelmina Zeltner Sa Filbrué.
35 000 en faveur de Mlle. Maria Charlotte Zuire, Marguerete Zeltner.
5.000 en faveur de Mr. Bonisant pére notaire à Moret exécuteur testamentaire.

f. 100.000 Total portant intérets à 5 p. ct. s'au du jour du decés.

Par l'autre testament le Gl. a dispose de tous ses fonds chez Messrs. T. Thomson, T. Bonar et cie. F. G. Esher, et Beltin en faveur de divers. Il a aussi desposé du reste de son avoir chez nous et a nomme Mr. Havier Armetly de Soluire pour executeur du 2d testament.

Ces deux exécuteurs testamentaires s'etant mis en regle vis-a-vis de nous, nous avous paye f. 102.430 10, le 9 Avril, dernier á Mr. M. Bonissant, en execution du testament du 4 Juin, 1816; principal et interets 2.700; to 2 Jnin á Mr. Havier Amieth pour balance du compte du Gl. Kosciuszko, chez nous f. 105.130 10 ensemble, au moyen de quoi nous n'avons plus, aucuns fonds appartenant á la succession du Gl.

Nous avions lieu de croire que les autres Maisons ne sont egalement dessaisies des fonds én leurs mains en ececution du seeond testament.

Quant aux fonds que pouvoit avoir le Gl. Kosciuszko en Amérique nous avons su que vers l'annee 1810 il avoit:

$12,500 environ places chez Mr. Jefferson le ancien President des Etats Unis.
4,500 environ chez un Mr. Barnes à Washington.

$17,000 S'vit á peu-pres quatre vingt cinq mille francs mais nous ignorons entierement s'il en à despose.

(Signé) MOTTINGUER.

Conforme à l'original:

POLETICA.

Copie d'uné lettre de Bonissant vère Notaire á Moret a S. Ex. Mr. W. Gl Pozzo di Borgo, datee de Moret du 3 Julliet, 1818.

Je n'ai pas été à même de connoitre la fortune de Mr. le General: il etoit retire tout pres d'jái dans la famille de Mr. Zeltner dout jái la confranee. Viola comme j'ai fait sa connoissance et que parsuite il mé donné des marques d' amitie, et mé a rendu aussi depositaire de son testament. Environ dix huit mois avant de mourir il avoit fait un testament dout il m'avoit confie un double; le testament aussitô son deces á ete ouvert suivant lest

formes legales; il a legué a plusiers personnes les sommes en argent qu'il avoit á Paris entre les mains de la Maison Nollinguer et comp. Il m'avoit choisi pour sou executeur testamentaire, et j'ai fait acquittes les legs. quant á ce concerne les autres moyens pécuniares de ce respectable Général jé ne puis vous donner aucun renseignement; je ne sais même pas s'il avoit d' autres fonds ou des biens ailleurs.

Je présume que vous pourriez le savoir en vous addressant á Mr. Zeltner chez lequel il demurait: Il serait plus á même de vous satisfaire sur cette demande Mr. Zeltner est parti il y a environ trois mois pour accompagner les precrieux restes de ce digne Général á Gracovie, et doit être de retour sous peu de jours.

J'ai l'honneur d' être etc.,

BONISSANT.

Conformé a l'original:

POLITICA.

Exhibit F.

SALEURE ON SUFIE, *le* 14 *Avril*, 1819.

MONSIEUR: J'ai recu il y a peu de jours, la lettre que vous m'ayez fait l'honneur de m'ecrire le 23d Juller, 1818, et au moment que je lue suis udiefe a vos autoicles pour suc faire donner au extract mortuaire du Général Kosciuszko demnent l'égalise pour vous linoayer par votre Minister a Paris apprens que votre charge d'affaires en France, vient du faire la demande au nom de Monsier Gallatin, a peu de pouvoir executer dans les Etats Unis d' l'Amerique, un les pus le defaut et que cet cute alloit etre expedie. Je regrette que le retard que eprouve votre lettre de mail pas parvins de satisfaire plutot a votre desir de mettre en execution les valoulor bienfaisantes et plalantre pique du grand homme, que nous plurons. J'ai l'honneur de vous remercier au detail interressant que vous me donnez dans votre lettre au subject de vos émigres et vous prie d'agreer l'assurance de ma plus haute estime et de mon respectnens d'evoument.

F. X. ZELTNER.

Exhibit E.

MONSIEUR: Ayant en l'avantage de jouir pendant plus de vingt annees de l'amitie toute particuliere de l'illustre défunt, qui a' passé plus de quire dans ma maison jé'u'ai pu ignorer des relations amicales que il a cultivé avec vous: une amitie fondé sur l'estime reciproque, ne pouvoit qu'etre durable; aussi suisque bien persuadé des regrets que vous causera la nouvelle de son decés si' peu attendu. Il en avoit quitte en Mai 1815, pour repondre aux desirs oue lui avait temoigné le Empereur de Russie de conférer avec lui á Vienne siu le sort de la Pologne; de Vienne il est revenu jusqu' a Soleure en Suisse ou il a demeure chez mon frere en attendant quelles circonstances decident s'il doit aller dans sa patrie ou revenu ici dans l'asile qu'il s'etait choisi; il etait siu le point de prendre le dernier part quand la mort l'enliver a sa patrie, i la aussi nombrency amis parmi les quels je sais que vousetes au premier rang. C'est cette consideration qui m'a fait devou de vons annoncier directment cette nouvelle.

Comme le General Koscuiszko, a dispose de la majeure partie de sa fortune en faveur de mes enfans, dames, nieces, freres et belle seur et que je suis enoutre tres lie avec ses parents que je compte aller vive en Pologne,